IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO Nos.138/2006, 139/2006, 192/2006, 261/2006. 296/2006, 206/2007 and 220/2007

Reserved on: 28.5.2010

Decided on: June 22, 2010

FAO No. 138/2006

New India Assurance Co. *Vs* **Deepa and others**

FAO No. 139/2006

New Assurance Co. *Vs.* **Kastura Devi and others**

FAO No.192/2006

New India Assurance Co. *Vs.* **Pawan Kumar and others**

FAO No.261/2006

New India Assurance Co. *Vs.* **Ram Lal and others**

FAO No.296/2006

New India Assurance Co. *Vs.* ***Champa Devi and others***

FAO No.206/2007

New India Assurance Co. *Vs.* **Hem Raj and others**

FAO No.220/2007

New India Assurance Co. *Vs.* **Gauri Devi and others**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. B.M. Chauhan, Advocate, in all the petitions.**

For the Respondents : **Mr. Dalip K. Sharma, Advocate, Mr. P.S. Chandel, Advocate, Mr. J.L. Bhardwaj, Advocate and Mr. Harish Dod, Advocate vice Mr. Peeyush, Advocate, for respective respondents, in all the petitions.**

Whether reporters of the local papers may be allowed to see the judgment?

Surjit Singh, Judge

Seven appeals, particulars whereof are given in the heading of this judgment, are being disposed of by this judgment, as a common question of law, has been raised in all the appeals.

2. Facts relevant for the disposal of the appeals are like this. Respondent B.D. Sharma was owner of Bus No. HP-07-5099. Bus was registered for carriage of passengers. A route permit had been issued, whereby the owner was permitted to ply it for carriage of passengers for hire or reward from Pari Mehal to Kasumpti (within the municipal limits of Shimla Town). Respondent Hem Raj was employed as driver on the bus. On 21.1.2005, the bus met with an accident near Nauni on Darlaghat-Parnu Road, when it was carrying a marriage party. Bus was not permitted to ply on that road, under the route permit, and there is no dispute about this fact. Some of the members of the marriage party died and some received injuries. Petitions, under Section 166 of the Motor Vehicles Act, were filed to seek compensation for the deaths/injuries to the passengers.

3. Appellant raised plea that it was not liable to pay compensation, because of breach of specific condition of the policy, regarding exclusion of its use for carriage of passengers for hire or reward.

4. Learned Motor Accident Claims Tribunal rejected the plea and held that the appellant was liable to pay compensation. According to the learned Tribunal, bus was registered for carriage of passengers for hire or reward. Insurance Company has filed these appeals.

5. I have heard the learned counsel for the parties and gone through the record.

6. This Court in ***J.B. Pipe***s Vs. ***Madan Lal and others***, ***2008 ACJ 574***, while answering similar question, has held that under Section 149(2) of the Motor Vehicles Act, 1988, it is open to an insurer to defend a claim petition on the ground of breach of a policy condition, excluding the use of vehicle for hire or reward, where the vehicle is not covered by a permit to ply for hire or reward. It has further been held that expression "where the vehicle is not covered by a permit to ply for hire or reward", includes a situation where the vehicle is being plied in an area which is outside the coverage of the route permit. Facts of that case were that a public goods carrier having permit to ply in certain areas, but not within the area of Himachal Pradesh, met with an accident while being plied in the State of Himachal Pradesh. A third party sustained injuries as a result of the accident. Plea was raised by the Insurance Company that there was violation of specific condition of the policy, excluding the use of vehicle for hire or reward and that the vehicle having no permit to ply within the State of Himachal Pradesh for hire or reward, it was not liable to pay compensation. Accepting the plea, this Court took the aforesaid view.

7. Present case is squarely covered by the aforesaid judgment. Hence, all the seven appeals are allowed and it is held that the appellant is not liable to pay compensation, on account of breach of specific condition of the policy, which condition is covered by Section 149(2)(a)(i)(a) of the Motor Vehicles Act, 1988, as held

in the aforesaid judgment. However, in view of the settled legal position, it is ordered that Insurance Company shall satisfy the award by paying compensation money to the claimants and thereafter it may recover the money from the insured.

All the appeals stand disposed of accordingly.

June 22, 2010(ss) **(Surjit Singh), J.**